SUBJECT INDEX

TABLE OF AUTHORITIES CITED

CASES

STATUTES

IN THE

Supreme Court of the United States

October Term, 1948.
No. 205

CITY OF CULVER CITY, *et al.*,
Petitioners and Appellants Below,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent and Appellee Below.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent opposes the granting of a Writ of Certiorari herein upon the ground that no federal question is involved. The contentions made and the replies thereto are similar to those in the companion case of *City of Vernon v. The People of the State of California*, No. 204. However, because the material has been presented in a different manner in the petitions it was deemed advisable by the respondent to file separate briefs. As to items 1, 3, 4 and 5, the arguments in the briefs of the respondent are identical. Item 2 is essentially the same.

Petitioners' Claim of Jurisdiction.

The petitioners claim jurisdiction under 28 U. S. C. 344(b). The petitioners assert that their property and property rights have been taken without due process of law in violation of the Fourteenth Amendment; that the state court's judgment is based upon non-federal grounds which are untenable in the face of federal grounds; that the City of Culver City is now a chartered city, thereby entitling petitioners to the protection of the due process clause covering property or property rights acquired or used by it in connection with "municipal affairs" under the "home rule doctrine"; that contracts between cities are entitled to the protection of the due process clause against state action; and that the judgment of the state court involved a matter instrinsically important to all municipalities operating under the "home rule doctrine."

The situation with respect to the petition of Culver City is similar to that presented by the City of Vernon except that the City of Culver City, by virtue of becoming a chartered city while this matter was pending on appeal, contends that it has avoided the rule announced in *Trenton v. New Jersey*, 262 U. S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A. L. R. 1471.

The petitioners in the statement of the case (Pet. Br. pp. 27-29) define the issues raised by them, and concede that if they cannot avoid the decision of *Trenton v. New Jersey, supra,* the petition should be denied. It is conceded by the petitioners that the abatement of a nuisance and the construction of state statutes are state matters, decisions on which are binding upon this court, except in so far as they violate the provisions of the Federal Constitution; and that nothing contained in the peti-

tioners' charter renders the petitioners immune from supervision and regulation by the state. The petitioners do not contend that any law has been passed by the legislature of California impairing its contract or taking its property without due process of law; but contend simply that the judgment of the court by its terms has the effect of taking property and property rights in violation of the due process clause.

Under a decree the petitioners and numerous other cities, including the City of Los Angeles, and their respective officers, were required to abate a nuisance caused by the discharge of sewage into Santa Monica Bay. Under California law cities were permitted to make contracts with other cities and governmental instrumentalities to carry out their functions. Pursuant to these laws contracts were entered into for the discharge of sewage of the various cities through a trunk line, "treatment" plant and submarine tube in Santa Monica Bay.

It is only under the authority of these various laws relating to the joint powers of cities that the petitioners and other cities are authorized to make such contracts. One city may act on behalf of all others. (*City of Oakland v. Williams*, 15 Cal. 2d 542, 103 P. 2d 168.) The petitioners have asserted that they are exempt from all liability for the creation of the nuisance by reason of their contracts with the City of Los Angeles. The District Court of Appeal stated:

> "This is a proceeding initiated by the people of the State of California on behalf of the state itself, and on behalf of the State Department of Public Health, as well as other state agencies, against all named defendants, to abate a public nuisance. Therefore, the

court rightfully refrained from passing upon any of the rights, obligations or liabilities affecting the various defendants by reason of their contractual relations with each other, and left those matters open for future adjudication in a proper proceeding. Although the aforesaid contracts concerned the disposal of sewage, the court would not be justified in this action to adjudicate the rights existing between the various appellants by reason of their contracts one with the other. In so far as the judgment herein is concerned, if any of the appellants have any rights against the city of Los Angeles, or *vice versa*, by reason of any existing contract, such rights have been preserved and may be enforced in a proper action. All of appellants' property and rights were preserved to them and the judgment in the instant action does not impair or violate any of their constitutional rights."

Thus it will be seen that the petitioners have not been deprived of any right, privilege or immunity whatever, whether claimed under the due process clause or otherwise, but on the contrary all the rights, privileges, immunities as well as obligations of all parties to the various contracts, including the City of Los Angeles, have been preserved, and have not been affected in any way whatever.

Questions Involved.

The respondent disagrees with the first and third statements of the questions involved. Respondent does not believe the second question germane to this proceeding. The first and third statements are restated as follows:

(1) Where a state court has ordered the abatement of a nuisance and has offered a privilege to one defendant to join with others in the building of suitable treatment works and facilities which will abate the nuisance, may such defendant be heard to complain where it has applied for and secured a permit from the State Board of Public Health to join in those facilities being constructed?

(3) Where a state law authorizes municipalities to contract together to operate a joint enterprise, and where one may act on behalf of all in carrying out such joint enterprise, and where the state has sued (first) for the common law abatement of a nuisance caused by such enterprise, being for sewage disposal, and (second) for the enforcement of state laws relating to sewage disposal, may a city complain that its property is taken without due process of law where the state courts hold that such contracts are not a defense to the maintenance of a nuisance and failure to comply with the statutes, but hold that if there are any rights, obligations, liabilities or privileges by reason of such contracts between the cities themselves that such rights may be litigated in independent proceedings between the respective contracting parties?

ARGUMENT.

Summary of Argument.

1. No federal question can be raised under the due process clause for there has been no actual impairment of right or property.

2. A chartered city cannot urge that a state has violated the due process clause.

3. When parties have been fully heard in the regular course of judicial proceedings, the alleged deprivation of property by judicial decision does not ordinarily raise a federal question.

4. No federal question is involved when the judgment of the state court rests on adequate and independent state grounds.

5. A city cannot escape a primary liability by making a contract.

6. The City of Culver City has applied for and secured a permit to sewer through the new plant.

I.

No Federal Question Can Be Raised Under the Due Process Clause for There Has Been No Actual Impairment of Right or Property.

It is the contention of the petitioners that the State of California by a judicial decision has deprived the petitioners of property without due process of law. The holding of the court has been set out hereinabove. It has been previously held by this court that if the action of the state court did not affect the right or property, but left it as it was before the litigation, the judgment did not deprive the appellant of any right, privilege or immunities secured by the Constitution or laws of the United States.

Abbott v. Tacoma Bank of Commerce (1899), 175 U. S. 409, 20 S. Ct. 153, 44 L. Ed. 217.

II.

A Chartered City Cannot Urge That a State Has Violated the Due Process Clause.

It is established in this court that a municipal subdivision of the state is not a "person" within the protection of the due process clause, and that a municipality cannot urge that the laws of the state violate the due process clause. (*Twin Falls County, State of Idaho, v. Hendrickson* (1939), 305 U. S. 568, 59 S. Ct. 149, 83 L. Ed. 358; *Trenton v. New Jersey* (1923), 262 U. S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A. L. R. 1471.)

In the latter case this court pointed out that in this respect there was no distinction between governmental and proprietary rights.

This court has held that there is no distinction between a chartered city and unchartered city in respect to the contract clause and the due process clause of the Constitution. (*Hunter v. City of Pittsburgh* (1907), 207 U. S. 161, 28 S. Ct. Rep. 40, 52 L. Ed. 151.)

It may be contended that a city chartered pursuant to a state constitution, as in California, has greater rights in this respect than a city chartered by a general legislative act. That such a contention is not tenable is shown by this court in *Railroad Commission of California v. Los Angeles Railway Corporation,* 280 U. S. 145, 50 S. Ct. 71, 74 L. Ed. 234. In the latter case this court held that this court is bound by the decisions of the highest courts of the state as to the powers of their municipalities. It will be pointed out in this brief that the contracts in question were made and could have been made only by virtue of the several acts of the legislature relating to joint powers of cities. The making of such contracts was a matter within the domain and regulation of the general laws of the state, and was not "a municipal affair." Thus, the Supreme Court of California in *Allied Amusement Company v. Bryam* (1927), 201 Cal. 316, 320, 256 Pac. 1097, held:

> "When a general law of the state provides, as the act in question does, for a scheme of public improvement, the scope of which both intrudes upon and transcends the boundary of one or several municipalities, such contemplated improvement ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state."

Thus it will be seen that these contracts do not relate to municipal affairs, but relate to matters of state concern. The only power that the cities of California have to make contracts of this type is by virtue of the several joint powers acts. Therefore, as far as this proceeding is concerned, there is no distinction whatever between a chartered city and an unchartered city, for the only authority a city has operating outside its own boundaries is by virtue of the act of the Legislature of California. The petitioners have cited California cases relating to sewer and street work in a municipality to the effect that the construction of sewers is a "municipal affair." There is no dispute that the actual construction work of a sewer within the city limits is a municipal affair. In the matter of making and letting contracts and in the matter of payment of employees, the regulation of employees, etc., this is a municipal affair, but the California court holds, as previously pointed out, that when two or more cities contract pursuant to California law the matter ceases to be a municipal affair and becomes a matter of state concern. It is submitted that the issuance of a charter to the City of Culver City is not material to this proceeding.

III.

When Parties Have Been Fully Heard in the Regular Course of Judicial Proceedings, the Alleged Deprivation of Property by Judicial Decision Does Not Ordinarily Raise a Federal Question.

This court has accepted jurisdiction in numerous cases involving the due process clause based upon action of a state through its court or judicial officers. Such cases involve extraordinary situations such as irregularity in judicial proceedings. The usual rule is that alleged impairment of any right without due process of law by judicial decision does not raise a federal question.

Cross Lake Shooting & Fishing Club v. Louisiana (1912), 224 U. S. 632, 32 S. Ct. 577, 579-580, 56 L. Ed. 924;

Kryger v. Wilson (1916), 242 U. S. 171, 37 S. Ct. 34, 61 L. Ed. 229.

The Constitution does not guarantee that decisions of the state court shall be free from error, or require that their pronouncement shall be consistent.

Worcester County Trust Co. v. Riley (1937), 302 U. S. 292, 58 S. Ct. 185, 82 L. Ed. 268.

When parties have been fully heard in the regular course of judicial proceedings, an alleged erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution.

Central Land Co. v. Laitley (1895), 195 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91.

It is not conceded that there is any error in the decision of the state court.

IV.

No Federal Question Is Involved When the Judgment of the State Court Rests on Adequate and Independent State Grounds.

It has been pointed out that there was no actual impairment of right or property by the decision of the state court. The decision of the state court was not based on any federal question at all, but on the contrary was based on adequate and independent state grounds. The decision of the state court was based upon two grounds: First, upon the specific statutory provisions of the state law relating to the discharge and treatment of sewage, and second, upon the abatement of a public nuisance. No federal question was passed upon nor had to be passed upon to decide the case. It has been repeatedly determined that to give this court jurisdiction it must appear affirmatively, not only that the federal question was presented for decision, but also that its decision was necessary to a determination of the cause, and that it was actually decided, or that judgment could not have been given without deciding it.

Wilson v. Cook, 327 U. S. 474, 480, 66 S. Ct. 663, 90 L. Ed. 793.

V.

A City Cannot Escape a Primary Liability by Making a Contract.

The principal contention of the petitioners is that they should have been held to have escaped liability for the discharge of their sewage by reason of their contracts with the City of Los Angeles. The City of Los Angeles, they maintain, was obligated at its own cost and expense to provide the necessary work for sewage disposal and to maintain such work in proper condition. The petitioners further contend that when those disposal works were out of repair, were worn out, and had become inadequate, the responsibility was solely that of the City of Los Angeles. The screening plant (sometimes called a treatment plant), and submarine tube was adequate for the population it served only for a few years after it was constructed and placed in operation in 1925. This system now serves approximately three times that number of people, but the screening plant has not been enlarged. If the responsibility were solely that of the City of Los Angeles, as the petitioners contend, then the Superior Court and the District Court of Appeal erred in holding the petitioners and other cities jointly responsible for the creation of a public nuisance in the operation of the present sewage disposal system. The record, however, shows that the petitioners and all other cities were jointly engaged in a common enterprise. The fact that the screening plant and submarine tube were under the sole control of the City of Los Angeles is not relevant to the issue. It has been established in *City of Oakland v. Williams,* 15 Cal. 2d 542, 103 P. 2d 168, that cities conducting joint enterprises under the joint powers act may provide that the employees of one

of them shall serve for all and that normal governmental processes of the city so selected shall prevail for the management of the enterprise. The petitioners have justified the legality of their contracts with the City of Los Angeles. Indeed, such contracts were valid only by virtue of these statutes. (Stat. of 1909, p. 67; Deering's Gen. Laws, Act 5992; Joint Powers Act, Stat. of 1921, p. 542; Deering's Gen. Laws, Act 1801.)*

Whatever powers the City of Vernon and the City of Culver City would have within their boundaries, they have no general authority to act outside their limits in the absence of the statute.

Since the only law which would permit the disposition of sewage by Los Angeles in conjunction with other agencies was the Joint Powers Act, the court was justified in deciding that the parties were engaged in a joint enterprise, and hence are jointly liable for its result.

It therefore follows that the City of Vernon and the City of Culver City and the other cities which were joined as defendants in this proceeding were engaged as a matter of law as well as a matter of fact in a joint enterprise and are therefore jointly liable. The cases of *Carmichael v. City of Texarkana,* and other similar cases, under such circumstances do not support the contention made by the petitioners.

The City of Texarkana owed a duty to its inhabitants; but the City of Los Angeles owed no duty to the City of Vernon nor the City of Culver City to dispose of such cities' sewage.

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*Pertinent portions of these statutes are printed in the Supplement to the petition in case No. 205, pages 41-48.

VI.

The City of Culver City Has Applied for and Secured a Permit to Sewer Through the New Plant.

The petitioners contend that the decision of the District Court of Appeal is based upon untenable non-federal grounds in that it requires the petitioners to adopt one of two alternate methods of abatement. The first method would require the City of Culver City to contribute its share of the cost of the plant now being constructed. The City complains that it has no other feasible means for disposal of sewage. This finding of the trial court was based upon the evidence produced by the City that it had no plans for sewage disposal, had had no engineer, had not made any studies, did not have any plans whatever, and did not have the funds (except through a bond issue) to pay for sewer facilities. [Rec. pp. 145-146.] Although the petitioners complain bitterly concerning this portion of the decision, the City of Culver City has applied for and secured a permit from the State Board of Public Health to sewer through the new sewage treatment plant being built at Hyperion. [See: Opinion Dist. Ct. of App.; Rec. p. 312.] The petitioners assert (Pet. and Br. p. 46) that as to the portion of the decision having to do with the abatement of a nuisance under the court's power to enforce police regulations, the petitioners can of necessity offer no objection. In view of these facts the City should not be heard to object to the particular terms of the judgment it now contends is erroneous.

Conclusion.

We submit that no constitutional question is involved in this proceeding; that the rights of the petitioners in any contracts with the City of Los Angeles have been carefully preserved, not only as to the petitioners but also as to the City of Los Angeles; that a municipality, as an agent of the state, cannot, against the state, raise a question under the due process clause, and that no federal question of substance is shown in the petition for the writ.

The respondent respectfully requests that the writ be denied.

Respectfully submitted,

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